U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

#5

DATE: JUN 18 2012 OFFICE: ACCRA, GHANA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented a material fact in an attempt to procure a visa to the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

On February 19, 2010, the Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute.

On appeal, counsel for the applicant states that new evidence demonstrates that the applicant's U.S. citizen spouse will suffer extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to counsel's brief, an affidavit from the applicant's spouse, a letter from the applicant's spouse, a psychological evaluation of the applicant's spouse, a letter from the applicant's spouse's physician, a letter from the applicant's spouse's parents, letters from members of the applicant's spouse's community, a letter regarding the applicant's spouse's education and debt, documentation of the applicant's financial support of her parents, biographical information for the applicant and his spouse, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(6)(C) of the Act, which provides, in pertinent part:

> (i) ...Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
>
> ...

The record demonstrates that the applicant made material misrepresentations when seeking a nonimmigrant visa to the United States in August of 2005. Specifically, the applicant misrepresented his name and marital status on his visa application, facts that were relevant to his nonimmigrant intent as his spouse resided in the United States. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa to the

United States through willful misrepresentation of a material fact. The applicant does not challenge his inadmissibility on appeal.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, states that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which in this case is the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984);

Matter of Kim, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

The Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel for the applicant states that the applicant's spouse will experience extreme hardship as a result of the applicant's inadmissibility. In regards to the hardship that the applicant's spouse will experience if she remains in the United States separated from the applicant, counsel states that the psychological impact of separation from the applicant on the applicant's spouse is extreme. In support of that statement, the record contains a psychological report written by Dr. [redacted] on April 15, 2010. Dr. [redacted] states that the applicant's spouse is psychologically vulnerable based on a history of abuse in her childhood and first marriage. She concludes that the applicant's spouse is "emotionally overwhelmed," exhibiting symptoms of Major Depressive Disorder and Generalized Anxiety Disorder, and that her psychological hardship is beyond that experienced by most families who are forced to separate. Dr. [redacted] recommends that the applicant's spouse obtain supportive cognitive behavioral therapy to help her cope with present symptoms. Additionally, Dr. [redacted], MD, states in a letter dated March 15, 2010 that he is treating the applicant's spouse for Stress Anxiety Disorder, Depression, and Weight Loss with "SSRI anti-depressants and anti-anxiety medications." Dr. [redacted] also states that the applicant's spouse is undergoing "therapeutic session of Cognitive Behaviour Therapy." A letter from [redacted] President of [redacted] states that the applicant's spouse is undergoing spiritual counseling, but it is unclear whether the

applicant's spouse is also receiving Cognitive Behavior Therapy, and if so, who is providing that therapy and with what frequency. Dr. [redacted] also notes that the applicant's spouse is fearful that she will not be able to have children if she remains separated from her husband. Dr. [redacted] does not mention why the applicant is unable to try to conceive a child in Nigeria, nor does he mention the medical problems suffered by the applicant's spouse that she mentions in her affidavit that she experienced while visiting Nigeria. The record illustrates that despite the applicant's spouse's psychological struggles; she has apparently held a full-time job while attending school and supporting herself financially in the United States. The AAO respects the opinion of the medical professionals who have evaluated the applicant's spouse, and it is clear that the applicant's spouse is suffering from psychological hardship, but the evidence does not illustrate that the psychological hardship to the applicant is beyond that normally experienced by families that are separated due to immigration violations. The "no-win," "lose-lose" situation described by Dr. [redacted] is the type of hardship faced by most families presented with the applicant's spouse's difficult circumstances.

Although the applicant's spouse states that she is suffering from financial hardship as a result of her separation from the applicant, she has not presented evidence of her income, expenses, or debt. The applicant's assertions are relevant and have been taken into consideration, but little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant, the record does not establish that the hardships she would face, considered in the aggregate, rise to the level of "extreme."

We must also consider whether the applicant's U.S. citizen spouse would suffer extreme hardship should she relocate to Nigeria to reside with the applicant. The applicant's spouse is a native of Nigeria who became a citizen of the United States through naturalization in 2008. She states that relocating to Nigeria would cause her emotional and financial hardship. In particular, she states that the nursing degree that she expected to earn would not be recognized in Nigeria and, as a result, she would not be able to obtain employment to support herself, her husband, and her parents. The applicant's spouse states that her parents are ill and that her financial support is crucial to their medical care. The applicant's spouse has presented evidence of her financial support of her parents. Although the record also contains a letter from the applicant's spouse's parents, there is no evidence presented of the cost of their medical care in Nigeria. Moreover, the AAO notes that hardship to the applicant's spouse's parents is only relevant to the extent that it is shown to cause hardship to the applicant's spouse. The applicant's spouse also states that she has educational debt that she would be unable to repay should she relocate to Nigeria. Although the applicant's spouse has presented a letter from the director of operations at [redacted], stating that she has taking out loans to cover her school fees "totaling about

11,650.00," there is no evidence in the record of this debt or the terms of its repayment. There is also no evidence in the record of the applicant's spouse's present income or finances. Based on this information it is not possible to conclude the degree of financial hardship the applicant's spouse's stated debt would cause her should she choose to relocate to Nigeria.

Counsel for the applicant has presented evidence that economic discrimination against women exists in Nigeria; however, there is very limited evidence in the record regarding the employment situation for individuals in the applicant's spouse's field – nursing assistant or nursing. Although the director of operations for the applicant's spouse's nursing program in the United States states that the applicant's spouse would have to obtain new certification in Nigeria and that "it is a known fact that nurses with equivalent of LPN certification in Nigeria are paid a fraction of their contemporaries in the U.S. earn," no documentary evidence was provided to back up this assertion. The record does not indicate where the director of operations at the applicant's spouse's academic institution obtained the information that she refers to regarding nursing certification in Nigeria. As a result, it is not possible to conclude the extent of the hardship that the applicant's spouse would experience in obtaining employment in Nigeria. We note that the record indicates that the applicant is employed in Nigeria and no explanation is provided for why his income is not sufficient to support his spouse. Again, although the AAO notes the applicant's spouse's difficult situation, the record does not establish that the hardships that she would face upon relocation to Nigeria rise to the level of "extreme" as contemplated by statute and case law.

The applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, but the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i), of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be

dismissed.

ORDER: The appeal is dismissed.